

### **REMARKS**

The foregoing amendment and remarks which follow are responsive to the non-final Office Action mailed January 30, 2007 in relation to the above-identified patent application wherein Claims 19, 20, and 49 were rejected under 35 U.S.C. 103(a) as being unpatentable over Seitzinger (i.e., U.S. Patent No. 5,362,294) in view of Buncke (i.e., U.S. Patent No. 5,931,855), and further in view of Towfigh (i.e., DE 32 27 984 A1).

Notably, in the Office Action, the Examiner indicated that Claim 35, 44 and 50-52 are allowed. No other issues were presented.

### **Summary of Claim Amendments**

By the amendment, Claim 19 has been amended to clarify that the anchors of the surgical implant are fully implantable within tissue and are not exposed in contrast to the cited prior art references. The amendment further clarify that the anchors are separate components from the suture cord in contrast to the teachings of the cited references.

### **Establishing a *Prima Facie* Case of Obviousness**

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d (BNA) 1438. Sources that may be used to provide a motivation to combine references include the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58.

Applicant respectfully submits that a *prima facie* case of obviousness has not been established based on the cited references. As is discussed in detail below, all of the pending claims are believed to be allowable. Reconsideration and withdrawal of the 103(a) rejection is respectfully requested.

**Rejection of Independent Claim 19 under 35 USC § 103(a) in view of Seitzinger, Buncke and Towfigh**

*In the Office Action, the Examiner rejected Claims 19, 20 and 49 under 35 USC § 130(a) as being unpatentable over Seitzinger (US Patent No. 5,362,294), in view of Buncke (US Patent No. 5,931,855) and further in view of Towfigh (DE 32 27 984 A1).*

More particularly, in the Office Action, the Examiner indicates that Figures 1 and 3 of Seitzinger show an organ sling comprising a web sling 10 with a suture line (12/14) attached to each end for securing the sling. The Examiner indicates that Seitzinger fails to show suture lines comprising V-shaped anchors disposed linearly along each suture line but that Buncke teaches “one-way” sutures having barbs on exterior surfaces allowing passage of the needle through tissue in one direction but not in the opposite direction.

The Examiner indicates that Buncke’s shortcoming is that the anchors are formed as an integral part of the suture chord but that Towfigh teaches one-way barbs embodied as anchor members comprising V-shaped prongs and having the suture chord extending axially therethrough. The Examiner then indicates it would have been obvious to modify Seitzinger to have one-way sutures. The Examiner further indicates that it would have been obvious to embody the anchor members similar to that disclosed in Buncke as a plurality of V-shaped anchor members as taught by Towfigh.

**Traversal of Rejection of Independent Claim 19 under 35 USC § 103(a)**

Applicant has fully considered the Examiner’s rejection of independent Claim 19 but maintains a belief in the patentability of the invention for the following reasons.

**Firstly**, Applicant points out that independent Claim 19 has been amended to clarify that the anchor members are “formed as separate components from the suture chord” and further that the “anchor members [are] configured to be fully implanted within the soft tissue such that no part of the anchor members extend beyond an exterior side of the soft tissue.” Applicants submit that the prior art references not only fail to teach or suggest the present invention as claimed in Claim 19 but that such references actually teach away from the claimed invention. Even further, Applicant submits that if the references were somehow modified to derive the present invention, at least the primary reference, namely, Seitzinger, would be rendered completely inoperable for its intended purpose.

For example, the Seitzinger reference specifically discloses a sling for retracting a body organ during a laparoscopic surgical procedure such that **Seitzinger provides two-way adjustability of the sling**. More specifically, Seitzinger discloses that “the arrangement is such that the surgeon can easily change the position of the uterus during the surgical procedure.” (Col. 3, lines 15-20). In this regard, the Seitzinger sling is adapted only for temporary use such as during laparoscopic surgery.

**In contrast, the present invention as claimed in amended Claim 19 discloses a one-way adjustable sling**. More specifically, Claim 19 recites that the anchor members are “advanceable through said soft tissue ... in a first distal direction and being non-moveable in an opposite direction.” As such, Applicant submits that one skilled in the art would not be motivated to modify Seitzinger with Buncke and/or Towfigh as such modification would render Seitzinger inoperable for its intended purpose of providing a two-way adjustable sling for temporary use such as during laparoscopic surgery.

**Secondly**, Applicant maintains a belief in the patentability of the present invention because **none of the cited references are understood to disclose Applicant’s claimed feature of the “anchor members being configured to be fully implanted within the soft tissue such that no part of the anchor members extend beyond an exterior side of the soft tissue” as recited in amended Claim 19.**

For example, **the Seitzinger reference discloses that the “needles [extend] through the abdominal wall.”** (Col. 1, lines 65-69). Seitzinger further discloses that the “needle 16 extends from the patient’s abdomen 25 where it can be grasped within an appropriate hemostat or clamp and held in place.” (Col. 3, lines 8-10; Figure 3). Even further, Seitzinger discloses that the “needles and clamps are, of course, outside the patient.” (Col 3, lines 25-26). Likewise, **Towfigh discloses that the “tension means can be inserted ... in one of the tendon stumps to be connected and can be guided back out of the other tendon stump.”** (Abstract). Furthermore, Towfigh clearly illustrates in Figure 2 the partial exposure of the tension means (the functional equivalent of Applicant’s anchor member) as being partially exposed outside the tissue (i.e., outside the tendon stump). In this regard, Towfigh also teaches away from Applicant’s claimed invention of the “anchor members being configured to be fully implanted within the soft tissue such that no part of the anchor members extend beyond an exterior side thereof.”

As such, Applicant submits that the prior art references, taken either alone or in any proper combination, fail to teach Applicant’s surgical tissue implant wherein the anchor members are fully implanted within the soft tissue. Therefore, one skilled in the art would not be motivated to modify Seitzinger with Buncke or Towfigh as such modification would not result in Applicant’s claimed invention of a surgical tissue implant wherein the anchor members, which are formed as separate components from the suture chord, are configured to be fully implanted within the soft tissue. Because of Applicant’s belief of a lack of motivation to modify Seitzinger, the Examiner’s rejection of Claims 19, 20 and 49 under 35 USC § 103(a) is believed to be overcome such that Claims 19, 20 and 49 are believed to be allowable over the cited prior art references.

### **Conclusion**

Applicant respectfully submits that as amended herein, Claims 19, 20 and 49 of the present invention are unobvious or the combination of the cited references and are believed to be in condition for allowance. Entry of the amendments and issuance of a Notice of Allowance is therefore respectfully requested. Should the Examiner have any

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suggestions for expediting the allowance of the application or requires additional information or has any suggestions how to resolve any outstanding issues, please contact Applicant's representative at the telephone No. listed below.

If any additional fee is required, please charge Deposit Account No. 19-4330.

Respectfully submitted,

Date: 4/30/07

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